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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

GERALDINE KYLES,

Plaintiff and Respondent,

v.

GARR CHILD CARE INC.,

Defendant and Appellant.

B244196

(Los Angeles County
Super. Ct. No. BC426976)

APPEAL from a judgment of the Superior Court of the County of Los Angeles,
Charles E. Palmer, Judge. Affirmed.

Law Offices of Mifflin & Associates, Ken Mifflin, for Defendant and Appellant.

Law Offices of Jack K. Conway, Jack K. Conway for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Garr Child Care Inc. appeals from a judgment entered in favor of plaintiff and respondent Geraldine Kyles and against defendant, following a bench trial, for wrongful termination in violation of public policy. Defendant contends that the trial court erred because plaintiff was terminated for abandoning her employment with defendant. We affirm.

FACTUAL BACKGROUND¹

The parties entered into an agreed statement that provides, in part, “The Action involves a claim by the [plaintiff] that she was wrongfully discharged in violation of public policy. Plaintiff . . . had been employed at [defendant’s] pre-school, starting in 1996 until she became involved in a physical altercation occurring on November 9, 2007. [Plaintiff] was placed on administrative leave on November 9, 2007 and never returned to her position as a preschool teacher. [Plaintiff] contended that she was the victim of assault by Ms. Williams[, a co-employee] [¶] From the date of the incident, November 9, 2007, until [plaintiff] received a letter, dated January [4], 2008, terminating her employment, there was a conflict in the evidence as to whether [plaintiff] ever responded to the contacts by the [d]efendant’s personnel concerning her employment and the incident. [Plaintiff] contended that she discussed filing a police report concerning the incident and that [d]efendant’s supervisor told her that if she did file such a report her employment would be terminated. Defendant denied that its supervisor made such a

¹ Plaintiff has submitted as part of the record on appeal several pages of what appears to be a summary of testimony from various witnesses, bearing the trial court’s “received” stamp. Defendant objects to these pages as being part of the record because defendant’s counsel “never approved” of them, “contends that [they are] incomplete and inaccurate in many particulars,” and requests that we disregard them. “The record on appeal may consist wholly or partly of an agreed statement. . . . The statement . . . must be signed by the parties.” (Cal. Rules of Court, rule 8.134(a)(1).) Because the purported witness testimony summaries were not signed by both parties and the record does not disclose that there was an agreement between the parties that they are to be included in the record before us, we disregard the purported summaries.

statement. [¶] The evidence at trial showed that the [defendant] gave different and conflicting reasons for terminating [plaintiff's] employment. . . . [¶] Defendant contended that [plaintiff] was discharged for abandoning her employment although at one time [defendant] stated that [plaintiff's] employment was terminated for becoming involved in an altercation. [¶] The facts to be decided on appeal is whether or not the superior court judge abused his discretion in ruling that plaintiff was credible in her assertion that defendant terminated plaintiff's employment due to the plaintiff's filing of a police report, despite a letter written by defendant requesting a meeting with the plaintiff before any decision was to be made regarding her future employment. The defendant contends that the plaintiff ignored the defendant's request to meet, which the defendant regarded as plaintiff's abandonment of her employment. Also, defendant opposes the use of any transcribed statements that plaintiff attempts to use on appeal, which were not signed and filed with the superior court during the course of the trial. The plaintiff contends that the court should use all such statements."

Defendant refers, without objection by plaintiff, to a December 18, 2007, letter from Ranza G. Trotter, owner/executive director of defendant, to plaintiff, stating, "This will be the third attempt to communicate with you regarding your employment status at [defendant]. [¶] The incident which occurred on December 9, 2007, between you and another employee was quite unfortunate, however, having you as an employee for more than ten years makes me want to once again reach out personally to talk as well as discuss the future of your position as a teacher at [the school]. [¶] We hope to hear from you no later than December 31, 2007 to discuss these issues. In the event we have not heard from you by then, we will assume that you have abandoned your position here at [the school]. [¶] You can reach me at the center or by cell"

Defendant also refers, again without objection by plaintiff, to a January 4, 2008, letter from Trotter to plaintiff, stating, "On November 11, 2007 you and a co-worker engaged in an act of violence here at the school which was a direct violation of school policy. Such unprofessional conduct cannot be tolerated among teachers or employees at [the school]. [¶] Our aim is to provide a safe and happy environment for the children in

our care, as well as assure the same to parents and guardians who leave their children at this facility. [¶] In keeping with the standards of [defendant], your actions have made it necessary for the administrative team and owners to make the decision to terminate you as an employee. This decision is final.”

PROCEDURAL BACKGROUND

Following a bench trial, the trial court issued a minute order² stating in relevant part, “On the first cause of action for wrongful termination in violation of public policy, judgment shall be in favor of [plaintiff] and against [defendant] in the amount of \$114,240 [¶] . . . [¶] After considering the testimony and evidence admitted at trial and considering the credibility of the witnesses, their respective demeanors and manners of testifying, and the inferences to be drawn from the circumstantial evidence admitted, the court finds that [defendant] discharged [plaintiff] for making and refusing to withdraw a complaint to the Los Angeles Police Department arising out of an incident in which [plaintiff] alleged she had been physically attacked by a fellow employee The court finds that termination of an employee for making or failing to withdraw a complaint of criminal activity to a law enforcement agency is sufficiently violative of fundamental public policy to serve as the basis for a claim of wrongful termination in violation of public policy. [Citations.] [¶] The evidence was conflicting on whether Trotter told [plaintiff that] her employment would be terminated if [plaintiff] did not withdraw her complaint to the police department and that [plaintiff’s] refusal to do so was the reason [defendant] terminated [plaintiff’s] employment. The court’s ultimate conclusion that it was . . . based in substantial part on the fact that the reason given by Trotter for the termination of [plaintiff’s] employment, as reflected in the exhibits admitted, changed at least three times, while [plaintiff’s] assertion that Trotter threatened her with termination if she didn’t withdraw her complaint to the police was consistent

² A statement of decision was not prepared because the parties did not request it.

throughout, beginning with a written memo submitted to the police within a day or two of making her complaint against [the fellow employee who plaintiff claimed attacked her].”

DISCUSSION

“‘[W]hile an at-will employee may be terminated for no reason, or for an arbitrary or irrational reason, there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy.’” (*Silo v. CHW Medical Foundation* (2002) 27 Cal.4th 1097, 1104, quoting *Gantt v. Sentry Insurance* (1992) 1 Cal.4th 1083, 1094, overruled on another point in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 80, fn. 6.) “[T]his public policy exception to the at-will employment rule must be based on policies ‘carefully tethered to fundamental policies that are delineated in constitutional or statutory provisions’ [Citation.] . . . The public policy that is the basis of this exception must furthermore be “‘public” in that it “affects society at large” rather than the individual, must have been articulated at the time of discharge, and must be “‘fundamental”’ and “‘substantial.”’” [Citation.]” (*Silo v. CHW Medical Foundation*, *supra*, 27 Cal.4th at p. 1104.) Violations of public policy generally fall into four categories: (1) termination for refusing to violate a statute, (2) termination for performing a statutory obligation, (3) termination for exercising a statutory right or privilege, or (4) termination for reporting an alleged violation of a statute of public importance. (*Gantt v. Sentry Insurance*, *supra*, 1 Cal.4th at pp. 1090-1091.)

Based upon the evidence adduced at trial, the credibility and demeanor of the witnesses, and reasonable inferences, the trial court found that defendant discharged plaintiff for making and refusing to withdraw a complaint she submitted to the Los Angeles Police Department arising out of an incident in which plaintiff alleged she had been physically attacked by a fellow employee. The trial court correctly found that plaintiff’s making or failing to withdraw her complaint of criminal activity made to a law enforcement agency is a violation of a fundamental public policy that may serve as a basis for a claim of wrongful termination in violation of public policy. Penal Code section 136.1 provides in part: “(b) [E]very person who attempts to prevent or dissuade

another person who has been the victim of a crime . . . from doing any of the following is guilty of a public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison: [¶] (1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge. [¶] (2) Causing a complaint . . . to be sought and prosecuted, and assisting in the prosecution thereof.”

Defendant contends that we should determine *de novo*—as a matter of law—that plaintiff abandoned her at-will employment with defendant and her employment was terminated for that reason. Defendant contends that plaintiff abandoned her employment because she ignored defendant’s December 18, 2007, letter, requesting that plaintiff contact defendant by December 31, 2007, to discuss the future of plaintiff’s position as a teacher at the school, and advising plaintiff that if she did not do so, defendant would assume that she has abandoned her position at the school.

Defendant concedes that where, as here, no statement of decision has been requested by the parties, we assume the trial court made whatever findings were necessary to support the judgment, and indulge all presumptions in favor of the judgment. (*Horning v. Shilberg* (2005) 130 Cal.App.4th 197, 202.) Defendant contends, however, that “it is undisputed” that plaintiff did not respond to the December 18, 2007, letter, and therefore we should review “the trial court’s application of California law as to whether [plaintiff] abandoned her position under undisputed facts *de novo*.” (*Nicoll v. Rudnick* (2008) 160 Cal.App.4th 550, 555-557 [the standard of review is *de novo* regarding the legal consequences which arise under undisputed facts].)

Contrary to defendant’s contention, it is not undisputed that plaintiff failed to respond to the December 18, 2007, letter. There is no evidence in the record that plaintiff failed to respond, and the parties agreed that, “From the date of the incident, November 9, 2007, until [plaintiff] received a letter, dated January [4], 2008, terminating her employment, there was a conflict in the evidence as to whether [plaintiff] ever responded to the contacts by the [d]efendant’s personnel concerning her employment and the

incident.” We therefore “indulge all presumptions in favor of the judgment.” (*Horning v. Shilberg*, *supra*, 130 Cal.App.4th at p. 202.)

The parties’ agreed statement states that the issue “to be decided on appeal is whether or not the superior court judge abused his discretion in ruling that plaintiff was credible in her assertion that defendant terminated plaintiff’s employment due to the plaintiff’s filing of a police report, despite [the December 18, 2007,] letter written by defendant requesting a meeting with the plaintiff before any decision was to be made regarding her future employment.” “[W]e defer to the trier of fact on issues of credibility. [Citation.]. ‘[N]either conflicts in the evidence nor “testimony which is subject to justifiable suspicion . . . justif[ies] the reversal of a judgment, for it is the exclusive province of the [trier of fact] to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’” [Citations.]” (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) The determination as to credibility is evaluated with other evidence to determine if there is substantial evidence to support the judgment. In short, whether a witness is credible is an issue we consider in a substantial evidence review. That review requires us to “resolv[e] all factual conflicts and questions of credibility in favor of . . . the prevailing parties.” (*Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1265; see also *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135 [“Under the substantial evidence rule, we have no power to pass on the credibility of witnesses . . .”], disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748 & fn. 6.)

The trial court stated that the evidence was conflicting regarding whether defendant told plaintiff that her employment would be terminated if she did not withdraw her complaint to the police department and her refusal to do so was the reason defendant terminated plaintiff’s employment. The reasons defendant gave as to why it terminated plaintiff’s employment varied. The parties agreed that “the evidence at trial showed that the [defendant] gave different and conflicting reasons for terminating [plaintiff’s] employment.” There is substantial evidence to support the judgment.

DISPOSITION

The judgment is affirmed. Plaintiff is awarded her costs on appeal.

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MOSK, Acting P. J.

We concur:

KRIEGLER, J.

KUMAR, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.